

## DEPARTMENT OF STATE REVENUE

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### LETTER OF FINDINGS NUMBER: 96-0307 ST AIRCRAFT REGISTRATION, EXCISE TAX AND USE TAX FOR THE YEARS 1994 THROUGH 1997

**NOTICE:** Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

### ISSUES

#### **I. Registration - Aircraft**

**Authority:** IC 6-6-6.5-3; IC 6-6-6.5-9

The taxpayer protests the aircraft registration fee.

#### **II. Excise Tax - Aircraft**

**Authority:** IC 6-6-6.5-12; IC 6-6-6.5-1

The taxpayer protests the excise tax imposed on its aircraft.

#### **III. Sales/Use Tax - Airplane**

**Authority:** IC 6-2.5-3-2; IC 6-6-6.5-1; IC 6-6-6.5-2

The taxpayer argues he was incorrectly assessed use tax on the storage of an aircraft in Indiana.

### STATEMENT OF FACTS

The taxpayer is a Delaware corporation formed in 1994 in order to purchase this aircraft. The corporation was formed by an individual and his father-in-law. The father-in-law, (hereinafter "pilot") is an Indiana resident, pilots the plane, and serves as the president of the corporation. The other member of the entity is originally from Indiana and currently has residences and business operations in several states including Indiana.

In 1994, the taxpayer purchased the aircraft at issue. The aircraft was financed through an Indiana bank, insured at an Indiana insurance company, and piloted by an Indiana resident. Additionally, the "home base" for insurance purposes is an Indiana airport. The Department was informed by a 1995 report from Evansville airport authorities that the aircraft was in fact hangered at their airport. Additionally, the taxpayer admits in two letters that the aircraft was stored at the airport when in Indiana and also that it was "based" in Indiana. (Letters of December 14, 1995 and November 13, 1995) As a result of this, the Department assessed the taxpayer with registration fees and excise tax for each year starting 1994, and also assessed the taxpayer with use tax on the aircraft purchase.

The taxpayer believes that the Department may have confused this aircraft with another that the taxpayer owned and registered in Indiana several years ago. However, the Department has checked and verified the aircraft registration numbers with the registration number provided by the aircraft authorities in Evansville.

Starting in 1996, the taxpayer has changed locations and now rents hangar space in nearby Henderson, Kentucky and at other locations throughout the country. (Taxpayer letter Feb. 22, 1996). The taxpayer protests all assessments.

#### **I. Aircraft - Registration**

### DISCUSSION

At issue is whether the taxpayer's airplane is subject to Indiana's annual airplane registration fee.

IC 6-6-6.5-3 (a) states that "any nonresident who bases an aircraft in this state for more than sixty (60) days,... shall apply to the department for a certificate of registration for such aircraft." Section (b) of IC 6-6-6.5-3 further provides that a fee of \$10.00 is charged for the registration application.

The taxpayer contends that the aircraft was not required to be registered because it was only present and in operating condition in Indiana for fifty-five (55) days in 1994 and even less for each year afterward. The taxpayer explains and the aircraft log shows that the aircraft was actually present in Indiana for over one hundred (100) days during 1994, however, for all but fifty-five (55) days the aircraft was "red-tagged" and inoperable while undergoing repair. Whether or not the aircraft was operable in Indiana is not determinative in this situation, instead, the question is where the plane was based for the time period.

IC 6-6-6.5-1 defines "Base" as "[t]he location or place where the aircraft is normally hangered, tied down, housed, parked, or kept, when not in use." The pilot states that for insurance purposes the plane must have a home base which is Evansville Dress Regional Airport. Also, when the plane is kept within the state, it is hangered at the Evansville airport. Since the aircraft was in the state over sixty (60) days in 1994, and based and hangered at Evansville Dress Regional Airport, the taxpayer is required to register the aircraft for 1994 and pay the ten (10) dollar registration fee.

The aircraft was also reported by the Evansville Regional airport authorities to be based in Indiana for over sixty

(60) days in 1995. The taxpayer is required to register for 1995 as well.

#### **FINDING**

The taxpayer's protest is partially sustained and partially denied. The taxpayer is required to register for 1994 and 1995, but not for 1996 or 1997.

#### **II. Aircraft - Excise Tax**

The taxpayer protests the imposition of the annual license excise tax.

The statute governing this issue is IC 6-6-6.5-12 which states:

There is hereby imposed an annual license excise tax upon taxable aircraft, which tax shall be in lieu of the ad valorem property tax levied for state and local purposes.

IC 6-6-6.5-1(i) defines a "taxable aircraft" as an aircraft which is required to be registered with the Department. As was determined above, the taxpayer's aircraft was required to be registered with the Department. Accordingly, the taxpayer's airplane was subject to the annual license excise tax for 1994 and 1995.

However, since the taxpayer took corrective measures and moved the aircraft out of state for 1996 and 1997, no excise tax is due for these two years.

#### **FINDING**

The taxpayer's protest is partially sustained and partially denied. Excise tax is due in 1994 and 1995, but not for the years 1996 or 1997.

#### **III. Sales/Use Tax - Airplane**

#### **DISCUSSION**

At issue here is whether Indiana may impose its use tax on the taxpayer's aircraft.

The controlling statute is IC 6-2.5-3-2(b) which provides:

The use tax is imposed on the storage, use, or consumption of an... aircraft..., if the aircraft:

(1) is acquired in a transaction which is an isolated or occasional sale; and

(2) is required to be licensed or registered by this state for use in this state.

Because the taxpayer acquired the aircraft in an occasional sale and was required to register the plane in this state, the Department may impose use tax on the aircraft.

#### **FINDING**

The taxpayer's protest is respectfully denied. The taxpayer was required to register his aircraft in both 1994 and 1995, therefore, the proposed use tax assessment issued by the Department is valid.